

LEONARD LILLY.

[To accompany bill H. R. 605.]

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DECEMBER 12, 1856.

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Mr. A. OLIVER, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Leonard Lilly, having had the same under consideration, beg leave to submit the following report :*

It appears that in 1837 the petitioner presented an application to the Commissioner of Pensions for an invalid pension, on account of wounds received in the battle of Queenstown. The evidence as to his having been severely wounded, while in the discharge of his duty in the service of the United States, is of the most conclusive character, consisting of the affidavits of Martin Phelps, major general, and other officers of his regiment and company. With the papers filed in 1837 is the sworn certificate of P. H. Burdick and G. W. Moxon, two respectable physicians, stating that they had examined the petitioner on the 8th July, 1837, and found that, by reason of a wound, occasioned by a ball or buck shot in his left side, he was at that time one half disabled from obtaining his subsistence by manual labor.

Lieutenant Jacob Cady, in an affidavit dated on the 5th January, 1838, testifies that he was a lieutenant, duly commissioned, in Colonel Stranahan's regiment of militia, and that, on the 13th day of October, 1812, a part of the company to which he belonged crossed over into Canada, at Queenstown, and were engaged in the Queenstown battle; that Leonard Lilly was among the number who crossed the river, and that said Lilly was wounded in the said battle; that, upon the return of the troops to the United States, the said Lilly was conveyed to the hospital, where he remained until about the last of November, under the care of the surgeon; that, from the time of the battle at Queenstown, to the knowledge of Cady, the said Lilly was constantly in the hospital, until about the last of November, as aforesaid. Lieutenant Cady further testifies that the command of the said company devolved upon him; and that, while in command, he gave the petitioner his discharge from the service, he having faithfully served out his term.

Your committee are of opinion that the fact of the petitioner having been wounded while in the service and in the line of his duty; to

have been honorably discharged from the service, and to have been entitled to a pension for a half disability, was conclusively proven on the 5th day of January, 1838.

It appears, upon referring to the rolls of the company in which the petitioner served, that it is noted thereon that he deserted November 5, 1812.

This remark upon the roll is fully shown to have been an error, occasioned by his absence in the hospital.

The claim for a pension appears to have been disallowed by the Commissioner of Pensions, for the reason that the roll stated the claimant to have deserted, as above. The commissioner had no authority to amend the roll, or disregard the remark upon it, although Lieutenant Cady had testified to, and explained the reason why Lilly had been returned as a deserter by an officer who had succeeded him in the command of the company.

Afterwards, in 1851, on an application again for a pension, he was allowed a pension, at the full rate of disability, from the 8th September of that year, notwithstanding his name continued to stand on the company roll with the remark, "a deserter."

On an application in June last for the benefit of the bounty land act, his claim was disallowed by the present Commissioner, on the ground that he stood on the rolls as a deserter, and that parol testimony could not be received to contradict the record. On an appeal to the Secretary of War, and upon an examination of the whole case, the Secretary thought the case so clear that he decided that the remark on the roll was an error, and ordered that the roll be amended, and that Lilly be considered to have been "honorably discharged."

Your committee, as before stated, are of the opinion that all the necessary facts were fully proven in 1838; the evidence subsequently furnished being merely cumulative, and only material as confirming what had been so clearly stated by Lieutenant Cady, from his own personal knowledge and information; and, considering the peculiar hardship of the case, and the injustice done to a gallant and suffering soldier, through mistake in the transfer of officers and men from one command to another; and desiring that justice, even at this late day be done, by granting the prayer of the petitioner, beg to introduce the accompanying bill for his relief.